

ESTTA Tracking number: **ESTTA429244**Filing date: **09/07/2011**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Laboratory Corporation of America Holdings		
Entity	Corporation	Citizenship	Delaware
Address	531 South Spring Street Burlington, NC 27215 UNITED STATES		

Attorney information	William M. Bryner Kilpatrick Townsend and Stockton LLP 1001 West Fourth Street Winston-Salem, NC 27101 UNITED STATES tmadmin@kiltown.com, bbryner@kiltown.com, llinder@kiltown.com Phone:336-607-7482
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Registration Subject to Cancellation

Registration No	3657902	Registration date	07/21/2009
Registrants	Davidson, Daniel 1415 Euclid Ave. Miami Beach, FL 33139 UNITED STATES SiaMack Alavi 2518 St. Ignatius Court Orlando, FL 32835 UNITED STATES		

Goods/Services Subject to Cancellation

Class 005. First Use: 2009/01/01 First Use In Commerce: 2009/01/21
All goods and services in the class are cancelled, namely: Dietary and nutritional supplements

Grounds for Cancellation

Priority and likelihood of confusion	Trademark Act section 2(d)
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Marks Cited by Petitioner as Basis for Cancellation

U.S. Registration No.	2000799	Application Date	03/21/1995
Registration Date	09/17/1996	Foreign Priority Date	NONE
Word Mark	LABCORP		

Design Mark	
Description of Mark	NONE
Goods/Services	Class 035. First use: First Use: 1995/04/26 First Use In Commerce: 1995/04/26 management and management consulting services in connection with the provision of clinical, diagnostic and analytical testing services; and computer information storage and retrieval in the field of clinical, diagnostic and analytical testing Class 042. First use: First Use: 1995/04/26 First Use In Commerce: 1995/04/26 clinical, diagnostic and analytical testing services; and providing access to an interactive computer database in the field of clinical, diagnostic and analytical testing

U.S. Registration No.	2249939	Application Date	04/25/1996
Registration Date	06/01/1999	Foreign Priority Date	NONE

Word Mark	LABCORP
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Design Mark	
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Description of Mark	NONE
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Goods/Services	Class 035. First use: First Use: 1995/04/28 First Use In Commerce: 1995/04/28 laboratory management services; management consulting services in the field of clinical, diagnostic and analytical testing of biological, environmental, and forensic specimens Class 042. First use: First Use: 1995/04/28 First Use In Commerce: 1995/04/28 clinical, diagnostic and analytical testing services for others, namely, performing tests on biological, environmental, and forensic specimens; providing, processing and receiving information via a global computer network in the field of clinical, diagnostic and analytical testing of biological, environmental, and forensic specimens
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Attachments	75094158#TMSN.gif (1 page)(bytes) RXLABCORP opposition.pdf (22 pages)(782822 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Lauren A. Linder/
Name	Lauren A. Linder
Date	09/07/2011

In the matter of U.S. Trademark Reg. No. 3,657,902
Registered July 21, 2009

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

LABORATORY CORPORATION)	
OF AMERICA HOLDINGS)	
)	
Petitioner,)	Cancellation No. _____
)	
vs.)	Mark: RXLABCORP
)	
SIAMACK ALAVI)	
and)	
DANIEL DAVIDSON)	
)	
Registrants.)	

PETITION FOR CANCELLATION

Petitioner Laboratory Corporation of America Holdings, a Delaware corporation with a principal place of business at 531 South Spring Street, Burlington, North Carolina 27215 ("Petitioner"), believes it is now being damaged, and will continue to be damaged, by the continued registration by Registrants SiaMack Alavi and Daniel Davidson ("Registrants") of the trademark RXLABCORP in connection with "dietary and nutritional supplements" in International Class 05 (the "RXLABCORP Mark"). Registrants have registered their RXLABCORP Mark on the Principal Register of the United States Patent and Trademark Office under U.S. Trademark Registration No. 3,657,902 for use in connection with the foregoing goods, and Petitioner hereby petitions to cancel such registration.

As grounds for this petition, Petitioner alleges as follows:

1. For more than fifteen years, and since before Registrants' first use (actual or constructive) of the RXLABCORP Mark shown in U.S. Trademark Registration No. 3,657,902, Petitioner, itself or through its predecessor(s)-in-interest (collectively referred to hereinafter as

“LabCorp”), has continuously used the distinctive mark LABCORP, both standing alone and together with other words and/or design elements (collectively the “LABCORP Marks”), in interstate commerce in the United States in connection with a range of services associated with medical diagnostics and laboratory management services, among other services in the health and medical field.

2. Continuously since LabCorp’s adoption and first use of its LABCORP Marks, and since before Registrants’ first use (actual or constructive) of the RXLABCORP Mark shown in U.S. Trademark Registration No. 3,657,902, LabCorp has extensively advertised and promoted its LABCORP Marks in connection with the distribution, rendition and sale of its services.

3. As a result of LabCorp’s long and continuous use of the LABCORP Marks in connection with its services, and as a consequence of LabCorp’s advertising, promotion, and sale of services under its LABCORP Marks, the consuming public and members of the trade have come to recognize the LABCORP Marks as being used by LabCorp or by a single source, and to associate and identify the designation “LABCORP,” when used in connection with services in the fields of health and medicine, with LabCorp or with a single source. LabCorp derives substantial goodwill and value from this recognition, association, and identification by the consuming public and the trade.

4. In addition to LabCorp’s prior use of the LABCORP Marks in commerce, Petitioner is also the owner of the following registrations on the Principal Register of the United States Patent and Trademark Office (collectively the “LABCORP Registrations”):

<u>Trademark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>	<u>Services</u>
LABCORP	2,000,799	September 17, 1996	<p>Management and management consulting services in connection with the provision of clinical, diagnostic and analytical testing services; and computer information storage and retrieval in the field of clinical, diagnostic and analytical testing (International Class 35); and</p> <p>Clinical, diagnostic and analytical testing services; and providing access to an interactive computer database in the field of clinical, diagnostic and analytical testing (International Class 42).</p>
LABCORP & Design	2,249,939	June 1, 1999	<p>Laboratory management services; management consulting services in the field of clinical, diagnostic and analytical testing of biological, environmental, and forensic specimens (International Class 35); and</p> <p>Clinical, diagnostic and analytical testing services for others, namely, performing tests on biological, environmental, and forensic specimens; providing, processing and receiving information via a global computer network in the field of clinical, diagnostic and analytical testing of biological, environmental, and forensic specimens (International Class 42).</p>

5. Pursuant to 37 C.F.R. § 2.122(d)(1), current printouts of information from electronic database records of the USPTO showing the current status and title of the LABCORP Registrations are attached as Exhibits 1 and 2.

6. The LABCORP Registrations remain valid, subsisting and uncanceled; are more than five years old; and have been made incontestable in accordance with Section 15 of the Lanham Act, 15 U.S.C. § 1065.

7. By the registration sought to be canceled herein, namely, U.S. Trademark Reg. No. 3,657,902, Registrants have registered the RXLABCORP Mark on the Principal Register in connection with health and medical-related goods in International Class 5, namely, “dietary and nutritional supplements.”

8. Registrants’ RXLABCORP Mark is confusingly similar in sight, sound, meaning and commercial impression to the previously used LABCORP Marks and/or the marks shown in the LABCORP Registrations.

9. The goods identified in U.S. Trademark Registration No. 3,657,902 for Registrants’ RXLABCORP Mark are related to the services on or in connection with which LabCorp has previously used the LABCORP Marks and/or the marks shown in the LABCORP Registrations.

10. Registrants’ RXLABCORP Mark, when used in connection with Registrants’ goods as identified in the subject registration, so resembles the previously used and registered LABCORP Marks as to be likely to cause confusion, mistake and/or to deceive customers concerning an affiliation, connection, association or sponsorship with the source of services sold under the LABCORP Marks, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. § 1052(d), with consequent injury to LabCorp, the public and the trade.

11. Pursuant to Section 14 of the Lanham Act, 15 U.S.C. § 1064, LabCorp believes it will be damaged by the continued registration of Registrants’ RXLABCORP Mark in that members of the purchasing public and/or the trade are likely to be confused, mistaken or

deceived that Registrants' goods offered under their RXLABCORP Mark originate from LabCorp, or from the same source as services sold under the LABCORP Marks, or that such goods are sponsored by, endorsed by, or affiliated with LabCorp. Such likelihood of confusion results in damage to the goodwill among purchasers and the trade that the LABCORP Marks symbolize. Continued registration of Registrants' RXLABCORPMark will support and assist Registrants in the confusing and misleading use of Registrants' RXLABCORP Mark, and, in addition, will continue to give color of exclusive statutory rights to Registrants in violation and derogation of prior and superior rights of LabCorp.

WHEREFORE, Petitioner requests that U.S. Trademark Registration No. 3,657,902 be cancelled in its entirety.

The required fee for instituting this proceeding is included herewith. Please charge any deficiency or refund in the filing fee to Deposit Account No. 11-0860.

Please recognize William M. Bryner and Lauren A. Linder, and the law firm of Kilpatrick Townsend & Stockton LLP as attorneys for LabCorp in connection with this cancellation proceeding. Please address all correspondence regarding this proceeding to William M. Bryner at Kilpatrick Townsend & Stockton LLP, 1001 West Fourth Street, Winston-Salem, NC 27101.

Respectfully submitted this the 7th day of September, 2011.



William M. Bryner
KILPATRICK TOWNSEND & STOCKTON LLP
1001 West Fourth Street
Winston-Salem, North Carolina 27101
Telephone: (336) 607-7300

Lauren A. Linder
KILPATRICK TOWNSEND & STOCKTON LLP
1100 Peachtree Street, NE
Suite 2800
Atlanta, Georgia 30309
Telephone: (404) 815-6500

Attorneys for Petitioner

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

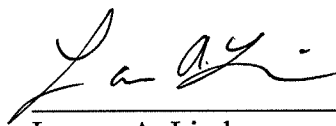
LABORATORY CORPORATION)	
OF AMERICA HOLDINGS)	
)	
Petitioner,)	Cancellation No. _____
)	
vs.)	Mark: RXLABCORP
)	
SIAMACK ALAVI)	
and)	
DANIEL DAVIDSON)	
)	
Registrants.)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing **PETITION FOR CANCELLATION** has been served on Registrants SiaMack Alavi and Daniel Davidson by mailing said copy on September 7, 2011, via First Class Mail, postage prepaid, and addressed as follows:

SiaMack Alavi
2518 St. Ignatius Court
Orlando, FL 32835

Daniel Davidson
1415 Euclid Ave.
Miami Beach, FL 33139



Lauren A. Linder

Attorney for Petitioner
Laboratory Corporation of America Holdings

EXHIBIT 1



Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Wed Sep 7 04:35:46 EDT 2011

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	BOTTOM	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

Logout Please logout when you are done to release system resources allocated for you.

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Record 10 out of 10

TARR Status	ASSIGN Status	TDR	TTAB Status
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(Use the "Back" button of the Internet Browser to return to TESS)

Typed Drawing

Word Mark LABCORP

Goods and Services IC 035. US 100 101 102. G & S: management and management consulting services in connection with the provision of clinical, diagnostic and analytical testing services; and computer information storage and retrieval in the field of clinical, diagnostic and analytical testing. FIRST USE: 19950426. FIRST USE IN COMMERCE: 19950426

IC 042. US 100 101. G & S: clinical, diagnostic and analytical testing services; and providing access to an interactive computer database in the field of clinical, diagnostic and analytical testing. FIRST USE: 19950426. FIRST USE IN COMMERCE: 19950426

Mark Drawing Code (1) TYPED DRAWING

Serial Number 74649422

Filing Date March 21, 1995

Current Filing Basis 1A

Original Filing Basis 1B

Published for June 25, 1996

Opposition

Registration Number 2000799

Registration Date September 17, 1996

Owner (REGISTRANT) Roche Biomedical Laboratories, Inc. CORPORATION NEW JERSEY 358 South Main Street Burlington NORTH CAROLINA 27215

(LAST LISTED OWNER) LABORATORY CORPORATION OF AMERICA HOLDINGS CORPORATION BY MERGER DELAWARE 430 S. SPRING ST. BURLINGTON NORTH CAROLINA 27215

Assignment Recorded ASSIGNMENT RECORDED

Attorney of Record Martha Gayle Barber

Type of Mark SERVICE MARK

Register PRINCIPAL

Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20070216.

Renewal 1ST RENEWAL 20070216

Live/Dead Indicator LIVE

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NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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This page was generated by the TARR system on 2011-09-07 13:41:31 ET

Serial Number: 74649422 Assignment Information Trademark Document Retrieval

Registration Number: 2000799

Mark (words only): LABCORP

Standard Character claim: No

Current Status: The registration has been renewed.

Date of Status: 2007-02-16

Filing Date: 1995-03-21

Transformed into a National Application: No

Registration Date: 1996-09-17

Register: Principal

Law Office Assigned: LAW OFFICE 105

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2007-02-16

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. LABORATORY CORPORATION OF AMERICA HOLDINGS

Address:

LABORATORY CORPORATION OF AMERICA HOLDINGS

430 S. SPRING ST.

BURLINGTON, NC 27215

United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 035

Class Status: Active

management and management consulting services in connection with the provision of clinical, diagnostic and analytical testing services; and computer information storage and retrieval in the field of clinical, diagnostic and analytical testing

Basis: 1(a)

First Use Date: 1995-04-26

First Use in Commerce Date: 1995-04-26

International Class: 042

Class Status: Active

clinical, diagnostic and analytical testing services; and providing access to an interactive computer database in the field of clinical, diagnostic and analytical testing

Basis: 1(a)

First Use Date: 1995-04-26

First Use in Commerce Date: 1995-04-26

ADDITIONAL INFORMATION

(NOT AVAILABLE)

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2007-02-16 - First renewal 10 year

2007-02-16 - Section 8 (10-year) accepted/ Section 9 granted

2007-02-16 - Assigned To Paralegal

2006-09-14 - TEAS Section 8 & 9 Received

2006-06-28 - Case File In TICRS

2002-07-26 - Section 8 (6-year) accepted & Section 15 acknowledged

2002-05-23 - Section 8 (6-year) and Section 15 Filed

2002-05-23 - PAPER RECEIVED

1996-09-17 - Registered - Principal Register

1996-06-25 - Published for opposition

1996-05-24 - Notice of publication

1996-04-11 - Approved for Pub - Principal Register (Initial exam)

1996-04-11 - Amendment to Use approved

1996-03-04 - Communication received from applicant

1996-04-04 - Amendment To Use Processing Complete

1996-03-04 - Use Amendment Filed

1996-02-09 - Communication received from applicant

1995-08-30 - Non-final action mailed

1995-08-17 - Previous Allowance Count Withdrawn

1995-08-16 - Approved For Pub - Principal Register

1995-08-09 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

Martha Gayle Barber

Correspondent

MARTHA GAYLE BARBER

ALSTON AND BIRD LLP

101 S TRYON ST

SUITE 4000

CHARLOTTE, NC 28280-4000

Phone Number: 704-444-1000

Fax Number: 704-444-1111



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Trademark Assignment Abstract of Title

Total Assignments: 1

Serial #: 74649422

Filing Dt: 03/21/1995

Reg #: 2000799

Reg. Dt: 09/17/1996

Registrant: Roche Biomedical Laboratories, Inc.

Mark: LABCORP

Assignment: 1

Reel/Frame: 1371/0143

Received: 07/27/1995

Recorded: 06/23/1995

Pages: 10

Conveyance: MERGER

Assignor: ROCHE BIOMEDICAL LABORATORIES, INC.

Exec Dt: 04/28/1995

Entity Type: CORPORATION

Citizenship: NEW JERSEY

Entity Type: CORPORATION

Citizenship: DELAWARE

Assignee: LABORATORY CORPORATION OF AMERICA HOLDINGS

358 SOUTH MAIN STREET

BURLINGTON, NORTH CAROLINA 27215

Correspondent: BRADFORD T. SMITH

LEGAL DEPARTMENT

358 SOUTH MAIN STREET

BURLINGTON, NC 27215

Search Results as of: 09/07/2011 01:41 PM

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350. v.2.2

Web interface last modified: July 25, 2011 v.2.2

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EXHIBIT 2



Trademarks > Trademark Electronic Search System (TESS)

TESS was last updated on Wed Sep 7 04:35:46 EDT 2011

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	BOTTOM	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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Start List At: OR Jump to record:

Record 9 out of 9

TARR Status	ASSIGN Status	TDR	TTAB Status
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Word Mark LABCORP

Goods and Services IC 035. US 100 101 102. G & S: laboratory management services; management consulting services in the field of clinical, diagnostic and analytical testing of biological, environmental, and forensic specimens. FIRST USE: 19950428. FIRST USE IN COMMERCE: 19950428

IC 042. US 100 101. G & S: clinical, diagnostic and analytical testing services for others, namely, performing tests on biological, environmental, and forensic specimens; providing, processing and receiving information via a global computer network in the field of clinical, diagnostic and analytical testing of biological, environmental, and forensic specimens. FIRST USE: 19950428. FIRST USE IN COMMERCE: 19950428

Mark

Drawing Code (3) DESIGN PLUS WORDS, LETTERS, AND/OR NUMBERS

Design Search Code 26.11.21 - Rectangles that are completely or partially shaded

Serial Number 75094158

Filing Date April 25, 1996

Current Filing Basis 1A

Original Filing Basis 1B

Published for April 22, 1997
Opposition Registration Number 2249939
Registration Date June 1, 1999
Owner (REGISTRANT) Laboratory Corporation of America Holdings CORPORATION DELAWARE 531 South Spring Street Burlington NORTH CAROLINA 27215
Attorney of Record William M. Bryner, Esq.
Prior Registrations 1984826;2000799
Description of Mark The lining is a feature of the mark and does not indicate color.
Type of Mark SERVICE MARK
Register PRINCIPAL
Affidavit Text SECT 15. SECT 8 (6-YR). SECTION 8(10-YR) 20090629.
Renewal 1ST RENEWAL 20090629
Live/Dead Indicator LIVE

TESS HOME	NEW USER	STRUCTURED	FREE FORM	BROWSE DICT	SEARCH OG	TOP	HELP	PREV LIST	CURR LIST
NEXT LIST	FIRST DOC	PREV DOC	NEXT DOC	LAST DOC					

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Serial Number: 75094158 Assignment Information Trademark Document Retrieval

Registration Number: 2249939

Mark



(words only): LABCORP

Standard Character claim: No

Current Status: The registration has been renewed.

Date of Status: 2009-06-29

Filing Date: 1996-04-25

Transformed into a National Application: No

Registration Date: 1999-06-01

Register: Principal

Law Office Assigned: LAW OFFICE 112

If you are the applicant or applicant's attorney and have questions about this file, please contact the Trademark Assistance Center at TrademarkAssistanceCenter@uspto.gov

Current Location: 830 -Post Registration

Date In Location: 2009-06-29

LAST APPLICANT(S)/OWNER(S) OF RECORD

1. Laboratory Corporation of America Holdings

Address:

Laboratory Corporation of America Holdings
531 South Spring Street
Burlington, NC 27215
United States

Legal Entity Type: Corporation

State or Country of Incorporation: Delaware

GOODS AND/OR SERVICES

International Class: 035

Class Status: Active

laboratory management services; management consulting services in the field of clinical, diagnostic and analytical testing of biological, environmental, and forensic specimens

Basis: 1(a)

First Use Date: 1995-04-28

First Use in Commerce Date: 1995-04-28

International Class: 042

Class Status: Active

clinical, diagnostic and analytical testing services for others, namely, performing tests on biological, environmental, and forensic specimens; providing, processing and receiving information via a global computer network in the field of clinical, diagnostic and analytical testing of biological, environmental, and forensic specimens

Basis: 1(a)

First Use Date: 1995-04-28

First Use in Commerce Date: 1995-04-28

ADDITIONAL INFORMATION

Lining and Stippling: The lining is a feature of the mark and does not indicate color.

Design Search Code(s):

26.11.21 - Rectangles that are completely or partially shaded

Prior Registration Number(s):

1984826

2000799

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

NOTE: To view any document referenced below, click on the link to "Trademark Document Retrieval" shown near the top of this page.

2009-06-29 - First renewal 10 year

2009-06-29 - Section 8 (10-year) accepted/ Section 9 granted

2009-06-15 - Assigned To Paralegal

2009-06-08 - TEAS Section 8 & 9 Received

2005-04-18 - Section 8 (6-year) accepted & Section 15 acknowledged

2005-04-16 - Assigned To Paralegal

2005-03-24 - Section 8 (6-year) and Section 15 Filed

2005-03-24 - PAPER RECEIVED

1999-06-01 - Registered - Principal Register

1999-03-24 - Allowed for Registration - Principal Register (SOU accepted)

1999-01-06 - Communication received from applicant

1998-08-13 - Non-final action mailed

1998-08-07 - Assigned To Examiner

1998-07-13 - Statement Of Use Processing Complete

1998-07-13 - Use Amendment Filed

1998-02-24 - Extension 1 granted

1998-01-08 - Extension 1 filed

1997-07-15 - NOA Mailed - SOU Required From Applicant

1997-04-22 - Published for opposition

1997-03-21 - Notice of publication
1997-02-05 - Approved For Pub - Principal Register
1997-01-30 - Examiner's amendment mailed
1997-01-29 - Previous Allowance Count Withdrawn
1997-01-22 - Approved For Pub - Principal Register
1996-12-02 - Communication received from applicant
1996-10-08 - Non-final action mailed
1996-09-26 - Assigned To Examiner

ATTORNEY/CORRESPONDENT INFORMATION

Attorney of Record

William M. Bryner, Esq.

Correspondent

William M. Bryner, Esq.
Kilpatrick Stockton LLP
1001 West Fourth Street
Winston-Salem NC 27101
Phone Number: 336-607-7300
Fax Number: 336-607-7500
